

REMARKS

Entry of this amendment for allowance or appeal is requested.

With entry of this amendment, the claims pending for consideration are claims 1-4, 11-17, 19-29, 36-42 and 44-59.

Claims 1 and 28 have been amended to specify that the coating on the inner surface of the encapsulating wall is a coating of a film-forming polymer as in claims 18 and 43. No new issues are raised as the feature added to claims 1 and 29 has previously been considered on the basis of claims 18 and 43, these last-mentioned claims being cancelled as redundant.

Reference to "waxes" has been deleted from claims 19, 44 and 57 for consistency with claims 1 and 28 as amended. This change also does not raise any new issues as other claims in the case, e.g. claims 20 and 45 as previously considered do not include any reference to waxes.

Minor changes have also been made in claim 24 and 48 to clarify that the polymer there referred to is the polymer used for the outer coating. It is believed that these changes, like the others made herein, do not raise new issues and facilitate placing the application in condition for allowance.

The applicants note that the Examiner has maintained the Section 103(a) rejection of the applicants' claims based on Ness WO 02/074430 in view of Natske et al. WO 96/03041 (¶ No. 1, page 3 of the action). It appears, however, that the Examiner has not considered the applicants' Supplemental Response of January 23, 2008 wherein it was pointed out that Ness does not qualify as citable art against the applicants.

As pointed out in the Supplemental Response, the present case is a national phase filing of PCT/GB03/0351808, filed August 12, 2003. Accordingly, August 12, 2003 is the applicants' U.S. filing date. This is less than a year after the publication date (September 26, 2002) of Ness WO 02/074430. Accordingly, the Ness WO disclosure can qualify as prior art only under Section 102(e) and this sort of art is not citable against the applicants pursuant to the exception provided under 35 U.S.C. 103(c), i.e. the invention described in the published Ness WO application and the invention claimed herein were commonly owned (by Quest International BV) or under obligation for common ownership at the time the present invention was made. It is noted that Ness is in fact a co-inventor herein.

In view of the foregoing, the Examiner is requested to withdraw the Section 103(a) rejection of claims 1-5, 11-20, 25, 27-30, 36-45, 50, 51 and 54-57 as set out in ¶ 1, page 3 of the action.

Detailed comment on the Examiner's rejection of the claims based on Ness WO 02/074430 and Natske et al. is not thought necessary in view of the indicated inapplicability of the WO disclosure as art citable against the present case. It is noted, however, that, even if Ness WO 02/074430 could be relied on, the Ness disclosure and Natske et al. do not make the applicants' invention obvious for the reasons set forth in the applicants' response of December 19, 2007, incorporated herein by reference.

This leaves for consideration the Examiner's Section 103(a) rejection of claims 1-4, 11-29 and 36-59 as unpatentable over Ness et al. U.S. 6,194,375 in view of Natske et al. WO 96/03041. The applicants submit that there is no proper basis in the art to warrant the Examiner's proposed combination of references. However, even if the references are considered together, the combination does not reach or suggest the applicants' invention .

As the Examiner has recognized, Ness does not disclose a capsule having a coating on the inner surface of the encapsulating shell wall. This is an essential feature of the applicants' invention.

The Examiner relies on Natske et al. to fill in the acknowledged deficiency of Ness. The applicants respectfully submit that there is no reason from Ness or from Natske et al. to consider coating the inner wall of, for example, Ness' microcapsules. Furthermore, the applicants' claims, as amended, call for an inner coating of film-forming polymer as in prior claims 18 and 43. Natske et al. do not disclose or suggest such an inner coating. According to Natske et al., the microcapsules contain a biologically active compound, notably a pesticide (see claim 12 thereof) with an inner layer of hydrophobic wax that wholly or partially encapsulates the active ingredient. The applicants' inner coating of film-forming polymer is different from wax as used by Natske et al. Thus, even if the references are combined, when there is really no reason in the art to do so, the applicants' invention does not result. It is noted further that Natske et al. are concerned with the encapsulation of biologically active materials which are fundamentally different from the perfumes of interest to the applicants. Wax materials are generally either soluble in perfume or allow perfume to move freely through them. This is substantively different from the use of film-forming polymer as called for by the applicants.

The applicants submit, with respect, that the respective situations presented by Ness on the one hand and Natske et al. on the other, are so different that there is really no reason, apart from hindsight in the light of the applicants' disclosure, to selectively combine the wax coating feature of Natske et al. with Ness to reject the applicants' claims. Natske et al. are concerned with agrochemicals or the equivalent which are fundamentally different from perfumes. This is shown by the following:

Perfumes are typically small organic molecules of molecular weight 150-250, which are generally fairly insoluble in water. They are quite difficult to encapsulate because of

(i) their small molecular size (easy diffusion through small pores),

(ii) solubility in surfactant solutions (the surfactant can pull the perfume out of a capsule and there is a strong thermodynamic driving force for it to leave the capsule in surfactant containing products e.g. most consumer products)

(iii) their solubility in organic materials, again allowing relatively easy diffusion.

Most agrochemicals typically lie outside the perfume property range, e.g. they are either

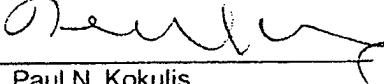
(i) water-soluble - in which case one cannot use the encapsulation methods disclosed by the applicants as these rely on forming an oil (perfume) in water emulsion

(ii) larger molecular weights and very insoluble in water - in which case diffusion through a wall is more difficult anyway. Furthermore, agrochemicals are generally not soluble in surfactant solutions (greatly reducing the thermodynamic driving force for leaving the capsule). Thus, it is much easier to keep such materials in a capsule compared to perfume. Accordingly, perfume, such as those of interest to the applicants, present specific problems that require special solutions such that what might be done with agrochemicals is not reasonably suggestive of what could be used to solve a problem in the perfume art. In short, there is no motivation in the art to combine features from Natske et al. with Ness although, as noted, even if such features are selectively grouped together, the applicants' invention as claimed does not result because the applicants require an inner coating of a film-forming polymer and neither Ness nor Natske et al. suggest this. Clearly, neither Natske et al. nor Ness is concerned with the problem of perfume retention for perfume encapsulates. Hence, there is no suggestion or motivation in the art to reach the applicants' invention.

Favorable reconsideration of this application with allowance is requested.

Respectfully submitted,

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